

# **EXHIBIT 1**

Entered on Docket

March 28, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

THE LEGACY ESTATE GROUP,

No. 05-14659

Debtor(s).  
\_\_\_\_\_ /

OFFICIAL CREDITORS COMMITTEE,

Plaintiff(s),

v.

A.P. No. 06-1173

JOHN M. BRYAN, et al.,

Defendant(s).  
\_\_\_\_\_ /

Memorandum re Motion to Certify Case to District Court for Jury Trial

Plaintiff originally demanded a jury trial in this adversary proceeding, but withdrew its demand. Three defendants have asked the court to transfer the case to district court for jury trial, even though at least two of them, John M. Bryan and the J. M. Bryan Family Trust, have filed proofs of claim. The filing of a proof of claim waives the right to a jury. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59 n.14, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).

Contrary to defendants' arguments, Rule 38(d) of the Federal Rules of Civil Procedure does not bar

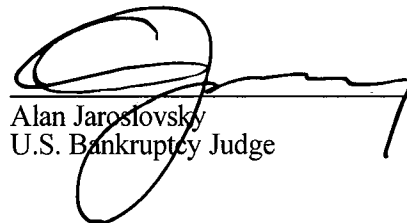
1 the withdrawal of a jury demand by plaintiff where the defendant did not rely on the demand. *Fuller v. City*  
2 *of Oakland*, 47 F.3d 1522, 1531 (9<sup>th</sup> Cir. 1995); *White v. McGinnis*, 903 F.2d 699, 701 (9<sup>th</sup> Cir. 1990);  
3 *Reid Bros. Logging Co. v. Kitchikan Pulp Co.*, 699 F.2d 1292, 1304 (9<sup>th</sup> Cir. 1983). Moreover, a party  
4 has no standing to object to waiver of a right by another party unless it is aggrieved by the waiver. Since  
5 Bryan and the J. M. Bryan Family Trust have waived the right to a jury, they have no standing to object to  
6 plaintiff's waiver of its right to a jury trial.

7 The rights of the third defendant, the John M. and Florence E. Bryan Trust, are more problematical.  
8 This defendant has not filed a claim in its own name. However, it appears that its alter ego may have filed a  
9 proof of claim or that it is close enough in identity to be bound by the jury waiver of other entities. Resolution  
10 of this matter requires an evidentiary hearing and further briefing.

11 For the foregoing reasons, the motion will be denied with prejudice as to defendants John M. Bryan  
12 and the J. M. Bryan Family Trust. As to the John M. and Florence E. Bryan Trust, the parties shall arrange  
13 an evidentiary hearing and submit supplemental briefs. In the event that the court determines that this  
14 defendant is entitled to a jury trial, the claims against it will be severed and only those severed claims will be  
15 transferred to the district court; the case will proceed in this court as to defendants who have waived their  
16 right to a jury.

17 Counsel for plaintiff shall submit an appropriate form of order.

18  
19 Dated: March 28, 2007

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21   
22 Alan Jaroslovsky  
23 U.S. Bankruptcy Judge  
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# **EXHIBIT 2**

Entered on Docket

June 28, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

**FILED**

JUN 26 2007

**FILED**  
ORDER FOR RELIEF

2007 JUN 27 AM 11:00 UNITED STATES DISTRICT COURT

U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CA.  
SANTA ROSA, CA.

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8/rt

In re THE LEGACY ESTATE GROUP,  
LLC,

Debtor.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiff,

v.

JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST, KULWINDER  
SIDHU, DEVINDER SIDHU, PACIFIC  
PARAGON INVESTMENT FUND LTD, a  
British Columbia company, HARRY CHEW,  
and AIC CAPITAL PARTNERS, LLC, a  
California limited liability company,

Defendants,

JOHN M. BRYAN, JOHN M. AND  
FLORENCE BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST,

Defendants/Cross-Claimants,

KULWINDER SIDHU, DEVINDER SIDHU,  
PACIFIC PARAGON INVESTMENT FUND  
LTD, a British Columbia company, HARRY  
CHEW, AIC CAPITAL PARTNERS, LLC, a  
California limited liability company, and  
LAMINAR DIRECT CAPITAL, L.P., a  
Texas limited partnership,

Defendants/Cross-Defendants.

No. C 07-2943 PJH  
Bankr. Case No. 05-14659 AJ  
Adv. Case No. 06-1173 AJ

**ORDER RE: REPORT AND  
RECOMMENDATION  
ON MOTION TO WITHDRAW  
BANKRUPTCY COURT'S  
REFERENCE**

1 On May 24, 2007, defendants and cross-claimants John M. Bryan, John M. and  
2 Florence E. Bryan Trust, and J.M. Family Trust, filed with the bankruptcy court a motion to  
3 withdraw the reference to the bankruptcy court, pursuant to 28 U.S.C. § 157(d) and  
4 Federal Rule of Bankruptcy Procedure ("FRBP") 5011. On June 6, 2007, the bankruptcy  
5 court transmitted the motion to this court pursuant to Rule 5011. Upon transferring the  
6 motion, the bankruptcy court did not provide any recommendation regarding whether its  
7 reference should be withdrawn.

8 Because the bankruptcy court is more familiar with the underlying chapter 11  
9 bankruptcy case filed in November 2005, and with the adversary case for which movants  
10 seek withdrawal of the reference, pursuant to Bankruptcy L.R. 5011-2(b), the court refers  
11 the instant motion to the bankruptcy court for a report and recommendation regarding  
12 whether the reference should be withdrawn under 28 U.S.C. § 157(d), including but not  
13 limited to whether the movant's right to a jury trial constitutes cause for withdrawal of the  
14 reference. Once the bankruptcy court has submitted to this court its recommendation  
15 regarding whether withdrawal of reference should occur, this court will set a further briefing  
16 schedule, if necessary, and issue a final order on the motion pursuant to Rule 5011.

17 **IT IS SO ORDERED.**

18  
19 Dated: June 25, 2007

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21 PHYLIS J. HAMILTON  
22 United States District Judge

23 Order transmitted to the Honorable Alan Jaroslovsky  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

IN RE LEGACY ESTATE GROUP, LLC,  
Debtor.

Case Number: CV07-02943 PJH  
**CERTIFICATE OF SERVICE**

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 26, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

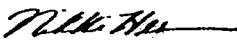
USBC Manager-Santa Rosa  
U.S. Bankruptcy Court  
99 South E Street  
Santa Rosa, CA 95404

Alan Jaroslovsky  
USBC  
Northern District of California  
Santa Rosa Division  
99 South E Street  
Santa Rosa, CA 95404

Devinder Sidhu  
P.O. Box 401  
3022 St. Helena Highway North  
St. Helena, CA 94574

Kulwinder S. Sidhu  
P.O. Box 401  
St. Helena, CA 94574

Dated: June 26, 2007

  
Richard W. Wieking, Clerk  
By: Nichole Heuerman, Deputy Clerk

# **EXHIBIT 3**



Entered on Docket

June 28, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

THE LEGACY ESTATE GROUP,

No. C 07-2943 PJH

Debtor(s).

OFFICIAL CREDITORS COMMITTEE,

Plaintiff(s),

Bkcty. No. 05-14659

v.

A.P. No. 06-1173

JOHN M. BRYAN, et al.,

Defendant(s).

Bankruptcy Judge's Report and Recommendation Regarding Withdrawal of Reference

Pursuant to the order of the District Court of June 25, 2007, the undersigned bankruptcy judge recommends that the District Court not withdraw the reference in this case for the following reasons:

1. The issues in this case are well within the ordinary experience and expertise of the bankruptcy court.
2. This case has been litigated in bankruptcy court for over seven months during which time the court has already made several key rulings. These include dismissing a cross-claim, denying a motion to transfer the

1 case to district court, and striking a jury demand.

2 3. Defendants John M. Bryan and the J. M. Bryan Family Trust have filed proofs of claim in the  
3 bankruptcy case. Thus, the underlying dispute is whether these defendants owe the bankruptcy estate money  
4 or whether the estate owes them money. Resolution of such disputes is a core purpose of the bankruptcy  
5 court both historically and pursuant to 28 U.S.C. § 157(b)(2)(B) and § 157(b)(2)(C). The filing of a proof  
6 of claim waives the right to a jury. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59 n.14, 109 S.Ct.  
7 2782, 106 L.Ed.2d 26 (1989).

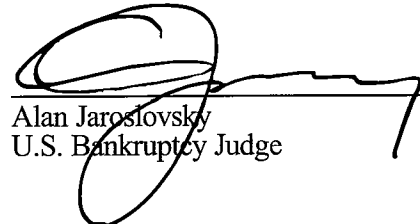
8 4. One defendant, the John M. and Florence E. Bryan Trust, has not filed a proof of claim. The issue  
9 is still pending here as to whether it is bound by the proofs of claim filed by the other two defendants, all of  
10 whom are related. Even if the court determines that this remaining defendant is entitled to a jury trial, the court  
11 suspects that principles of issue preclusion may make that litigation relatively simple once this court has  
12 adjudicated the rights of the other two defendants.

13 WHEREFORE, the undersigned bankruptcy judge recommends that the reference not be withdrawn.

14 The undersigned also expresses his appreciation to the District Court for an opportunity to comment  
15 on this matter. In some cases, litigants use a motion to withdraw the reference for improper purposes,  
16 including a desire to delay litigation or make it more expensive for a bankruptcy estate with limited assets to  
17 prosecute. Also, in some instances motions to withdraw the reference are filed in an attempt to forum shop  
18 when the moving party becomes unhappy with bankruptcy court rulings.

19  
20 Dated: June 28, 2007

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Alan Jaroslovsky  
U.S. Bankruptcy Judge

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States Bankruptcy Court for the Northern District of California hereby certifies that a copy of the attached document was mailed to all parties listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.

Dated: August 8, 2007

Dan Sondheim  
Deputy Court Clerk

Phyllis J. Hamilton  
United States District Judge  
United States District Court  
United States Courthouse  
450 Golden Gate Ave.  
P. O. Box 36060  
San Francisco, CA 94102-3489

United States District Court  
United States Courthouse  
450 Golden Gate Ave.  
P. O. Box 36060  
San Francisco, CA 94102-3489

# **EXHIBIT 4**

Entered on Docket

August 23, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

**FILED**

AUG 09 2007

**RECEIVED**

AUG 13 2007

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. BANKRUPTCY COURT  
SANTA ROSA, CA

*16/11/07*

In re THE LEGACY ESTATE GROUP,  
LLC,

Debtor.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiff,

v.

No. C 07-2943 PJH  
Bankr. Case No. 05-14659 AJ  
Adv. Case No. 06-1173 AJ

**STAY ORDER; ADMINISTRATIVE  
CLOSURE**

JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST, KULWINDER  
SIDHU, DEVINDER SIDHU, PACIFIC  
PARAGON INVESTMENT FUND LTD, a  
British Columbia company, HARRY CHEW,  
and AIC CAPITAL PARTNERS, LLC, a  
California limited liability company,

Defendants,

JOHN M. BRYAN, JOHN M. AND  
FLORENCE BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST,

Defendants/Cross-Claimants,

KULWINDER SIDHU, DEVINDER SIDHU,  
PACIFIC PARAGON INVESTMENT FUND  
LTD, a British Columbia company, HARRY  
CHEW, AIC CAPITAL PARTNERS, LLC, a  
California limited liability company, and  
LAMINAR DIRECT CAPITAL, L.P., a  
Texas limited partnership,

Defendants/Cross-Defendants.

**FILED**  
AUG 13 2007  
U.S. BANKRUPTCY COURT  
SANTA ROSA, CA

United States District Court

For the Northern District of California

1 On May 24, 2007, defendants and movants John M. Bryan ("Bryan"), John M. and  
2 Florence E. Bryan Trust ("JFB Trust"), and J.M. Bryan Family Trust ("JMB Trust"), filed with  
3 the bankruptcy court a motion to withdraw the bankruptcy court's reference, pursuant to 28  
4 U.S.C. § 157(d) and Federal Rule of Bankruptcy Procedure ("FRBP") 5011. On June 6,  
5 2007, the bankruptcy court transmitted the motion to this court pursuant to Rule 5011. On  
6 June 29, 2007, the bankruptcy court submitted to this court a report and recommendation,  
7 in which the bankruptcy court recommended that this court deny the motion to withdraw the  
8 reference. Subsequently, the parties briefed the motion before this court.

9 Plaintiff, the official committee of unsecured creditors of the debtor Legacy Estate  
10 Group, LLC ("committee"), 05-14659 AJ, filed the adversary proceeding, 06-1173 AJ,  
11 giving rise to the instant motion, against a number of defendants/creditors, including Bryan,  
12 the JMB Trust, and the JFB Trust, to recover estate property and damages. The first  
13 amended complaint ("FAC") includes twenty claims, most of which seek relief under the  
14 Bankruptcy Code, but a few which seek relief under state law as well.

15 Movants seek withdrawal of the reference to the bankruptcy court based on the JFB  
16 Trust's right to a jury trial. The United States Supreme Court has held that the Seventh  
17 Amendment entitles a person who has not submitted a claim against a bankruptcy estate  
18 to a jury trial when sued by a bankruptcy trustee seeking monetary relief, even in core  
19 proceedings under the Bankruptcy Code, such as fraudulent or preferential transfer  
20 actions. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 40 n.3, 50 (1989) (fraudulent  
21 transfer case); *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (preferential transfer case).  
22 Unless all parties consent and the district court designates the bankruptcy court to do so,  
23 the bankruptcy court may not conduct the jury trial. See § 157(e). However, a creditor  
24 waives the jury trial right by filing a proof of claim in the bankruptcy case. See  
25 *Granfinanciera*, 492 U.S. at 40; *Langenkamp*, 498 U.S. at 44.

26 The current motion appears to have been motivated by movants' dissatisfaction with  
27 related rulings by the bankruptcy court. There is no dispute that Bryan and the JMB Trust  
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1 filed proofs of claims in the bankruptcy case. On March 28, 2007, the bankruptcy court  
2 noted that was the case, and on June 27, 2007, struck Bryan and the JMB Trust's  
3 demands for jury trial. Similarly, there is also no dispute that the JFB Trust did *not* file a  
4 proof of claim. The dispute that has not been resolved, though, and that appeared to have  
5 been imminent at the time movants filed the motion before this court, concerns whether or  
6 not Bryan and the JMB Trust constituted alter egos for the JFB Trust, such that the filing of  
7 Bryan's and the JMB Trust's proofs of claims waived the JFB Trust's jury trial right. In fact,  
8 in its March 28, 2007 order, the bankruptcy court granted the parties leave to conduct  
9 discovery on the issue, ordered the parties to submit supplemental briefs, and indicated  
10 that it would hold an evidentiary hearing on the issue. However, given the instant motion to  
11 withdraw its reference, the bankruptcy court did not resolve the issue.

12 Because that issue is central to this court's decision on the motion to withdraw the  
13 reference, the court STAYS the instant motion pending resolution of the issue by the  
14 bankruptcy court. The court notes that the bankruptcy court retains jurisdiction to decide  
15 the issue in spite of the fact that the current motion to withdraw was filed. See Federal  
16 Rule of Bankruptcy Procedure 5011(c) (noting that motion to withdraw reference does not  
17 stay proceedings before bankruptcy judge "except that the bankruptcy judge may stay, on  
18 such terms and conditions as are proper, proceedings pending disposition of the motion").  
19 Because of the size and complexity of the Chapter 11 bankruptcy case, the bankruptcy  
20 court's familiarity with the case in general and with the very specific issue here, and the  
21 impact on the bankruptcy estate, this issue is more appropriately determined by the  
22 bankruptcy court. To the extent that the bankruptcy court decides that the JFB Trust does  
23 indeed constitute an alter ego of Bryan and/or the JMB Trust, then JFB Trust, in addition to  
24 Bryan and JMB Trust, will all have waived their jury trial right and the instant motion will be  
25 mooted. However, to the extent the bankruptcy court determines otherwise, then this court  
26 will rule on the motion to withdraw reference.


27 Accordingly, the court STAYS this motion and case pending the bankruptcy court's  
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1 resolution of the above issue. The parties are ORDERED to advise this court immediately  
2 upon the bankruptcy court's ruling on the issue.

3 The clerk shall administratively close this case. The closure has no legal effect; it is  
4 purely a statistical matter. The case will be reopened, the stay vacated, and further order  
5 issued upon notification by the parties in accordance with the conditions set forth above.

6  
7 **IT IS SO ORDERED.**

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9 Dated: August 9, 2007

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11 PHYLIS J. HAMILTON  
12 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

IN RE LEGACY ESTATE GROUP,  
Debtor.

Case Number: CV07-02943 PJH

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 9, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

USBC Manager-Santa Rosa  
U.S. Bankruptcy Court  
99 South E Street  
Santa Rosa, CA 95404

Alan Jaroslovsky  
USBC  
Northern District of California  
Santa Rosa Division  
99 South E Street  
Santa Rosa, CA 95404

Devinder Sidhu  
P.O. Box 401  
3022 St. Helena Highway North  
St. Helena, CA 94574

Kulwinder S. Sidhu  
P.O. Box 401  
St. Helena, CA 94574

Dated: August 9, 2007



Richard W. Wieking, Clerk  
By: Nichole Heuerman, Deputy Clerk